

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

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IN RE: REFRIGERANT  
COMPRESSORS ANTITRUST  
LITIGATION

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)  
) No. 2:09-md-2042  
)  
) MDL. No. 2042  
)  
) Honorable Sean F. Cox  
)

THIS DOCUMENT RELATES TO:  
General Electric Co. v. Whirlpool Corp.,  
et al., No. 2:13-12638

**MOTION BY DEFENDANTS EMBRACO NORTH AMERICA, INC.,  
WHIRLPOOL S.A., AND WHIRLPOOL CORPORATION FOR LEAVE TO  
FILE A RESPONSE TO GENERAL ELECTRIC'S SURREPLY**

The Embraco Defendants and Whirlpool Corp. respectfully request the Court to enter an Order allowing them to file a Response to Plaintiff's Surreply in Further Opposition to the Embraco Defendants' and Danfoss Defendants' Motions to Stay Litigation ("Surreply").<sup>1</sup>

1. GE elected to file its Surreply in order to assert a new legal theory based on a case cited in passing in its Opposition and several additional cases it had not previously cited. In applying this purported theory, GE makes the mischaracterization that it has proffered "unrebutted evidence" establishing that it was fraudulently induced to use its own standard arbitration clause. It is only fair for the Embraco Defendants and Whirlpool Corp. to have the opportunity to respond to this new theory and to rebut this mischaracterization, which they do in their proposed Response, attached hereto as Exhibit A.

2. In accordance with Local Rule 7.1(a), counsel for the Embraco Defendants and Whirlpool Corp. conferred with counsel for GE to explain the

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<sup>1</sup> Capitalized terms not defined here have the same meaning as in the Motion and Brief in Support of Motion by Embraco North America, Inc., Whirlpool S.A., and Whirlpool Corporation to Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3, Aug. 16, 2013, ECF No. 390 ("Embraco's Mot."). Capitalized terms not defined here also have the same meaning as in the Reply in Support of Motion by Embraco North America, Inc., Whirlpool S.A., and Whirlpool Corporation to Stay Proceedings Pending Arbitration Pursuant to 9 U.S.C. § 3, Sept. 30, 2013, ECF No. 423 ("Embraco's Reply").

nature and legal basis of this motion but was unable to obtain GE's concurrence.<sup>2</sup>

Counsel for the Embraco Defendants and Whirlpool Corp. also conferred with counsel for Danfoss, and Danfoss consents to and supports this motion.

DATED: November 5, 2013

Respectfully submitted,

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*Counsel for Defendants Whirlpool S.A., Embraco North America, Inc., and Whirlpool Corporation*

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<sup>2</sup> On November 4, 2013, counsel for the Embraco Defendants and Whirlpool Corp. communicated with counsel for GE via telephone regarding the Embraco Defendants and Whirlpool Corp.'s request for concurrence in the Embraco Defendants and Whirlpool Corp.'s Motion for Leave to File a Response to GE's Surreply.



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General Electric Co. v. Whirlpool Corp.,  
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**BRIEF IN SUPPORT OF MOTION BY DEFENDANTS EMBRACO  
NORTH AMERICA, INC., WHIRLPOOL S.A., AND WHIRLPOOL  
CORPORATION FOR LEAVE TO FILE A RESPONSE TO GENERAL  
ELECTRIC'S SURREPLY**

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### **ISSUE PRESENTED**

Should the Court grant the Embraco Defendants and Whirlpool Corp. leave to file a Response to Plaintiff GE's Surreply?

Embraco Defendants and Whirlpool Corp.'s Answer: Yes

## **CONTROLLING AUTHORITIES**

*Engineering & Manufacturing Services, LLC v. Ashton*,  
387 F. App'x 575 (6th Cir. 2010)

*Saad v. City of Dearborn Heights*,  
876 F. Supp. 2d 925 (E.D. Mich. 2012)

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## ARGUMENT

GE elected to file a Surreply in order to offer a new legal standard, and the Embraco Defendants and Whirlpool Corp. should have the opportunity to respond to that standard and its misapplication by GE.

GE's Surreply takes a Third Circuit case, *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764 (3d Cir. 2013), cited in a footnote in its Opposition, as well as several cases it had not previously cited, and asserts that they form the appropriate legal standard here. Surreply at 2. GE's Surreply also makes the erroneous assertion that its "unrebutted evidence" creates a genuine dispute about the validity of its arbitration clauses, ignoring controlling legal precedent under which GE's allegations are insufficient as a matter of law. Surreply at 2-3.

Simple fairness and due process call for the Embraco Defendants and Whirlpool Corp. to have the opportunity, through the attached proposed Response to GE's Surreply, to address GE's new standard and GE's mischaracterizations, even if only briefly. *See Eng'g & Mfg. Servs., LLC v. Ashton*, 387 F. App'x 575, 583 (6th Cir. 2010); *see also Saad v. City of Dearborn Heights*, 876 F. Supp. 2d 925, 935 (E.D. Mich. 2012) ("[T]he Court has discretion to permit [a surreply] where it is reasonable.").

## CONCLUSION

For the foregoing reasons, the Embraco Defendants and Whirlpool Corp. respectfully request that the Court enter an Order granting it leave to file its Response, attached hereto as Exhibit A.

DATED: November 5, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 5, 2013 the foregoing Motion for Leave to File a Response to General Electric's Surreply was filed with the Court using the ECF system, which will send notification to all counsel registered to receive electronic notice from the Court's electronic filing system.

/s/ Howard B. Iwrey

Howard B. Iwrey